



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Richards Painting Co.--Reconsideration
File: B-232678.2
Date: May 19, 1989

DIGEST

Request for reconsideration is granted where the prior decision was based on an error of fact crucial to the holding.

DECISION

The Department of the Army requests reconsideration of our decision in Richards Painting Co., B-232678, Jan. 25, 1989, 68 Comp. Gen. _____, 89-1 CPD ¶ 76, sustaining Richards' protest of the rejection of its bid as late under invitation for bids (IFB) No. DAKE70-88-B-0064, issued by the Army for exterior trim painting of family housing in Alaska. We grant the request for reconsideration and find that the protest should be denied. We reverse our recommendation of award to Richards and award of protest costs.

Bid opening under this IFB was scheduled for 3 p.m. on September 6, 1988. The IFB advised bidders that hand-carried bids were to be taken to the depository in room 127, building 977, Fort Richardson.

Richards protested that when its employee got into the building he found that the bid opening official had already left the room for receipt of bids and gone to another room for bid opening. By the time Richards' employee found the bid opening official he was told the bid was too late for the 3 p.m. opening. The bid opening official then noted the date and time of receipt, 3:03 p.m., on the bid envelope.

We ascertained from the Army that the bid opening room and the bid receiving room were not the same room although they were steps apart from each other. Since the bid opening room was a different room from the one designated for receipt of hand-carried bids, we concluded that when the bid opening official announced that it was 3 p.m., and closed bidding in the bid opening room, she had no way of knowing if any other hand-carried bids had been delivered by 3 p.m., in the room designated for receipt of hand-carried bids. In

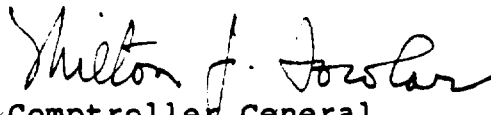
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view of this and the fact that it took Richards' employee a certain amount of time to make inquiries as to where the bid opening official was and to be directed to the bid opening room, we found that the evidence supported the conclusion that the bid was at the room designated for receipt of the hand-carried bids prior to 3 p.m. We held that since the Army failed to staff the room designated for bid opening up to 3 p.m., it was improper government action which prevented Richards' employee from making a timely delivery and this was the proximate cause of the bid's late receipt.

The Army, in its request for reconsideration, asserts that our decision is based on a factual error and that the record before us when we considered the protest would prove this. The Army points to Richards' employee's affidavit which states that the employee went to the bid opening official's office with the bid when he arrived at the building only to find it unattended. The Army states that the bid opening official's office is not the same as the room designated for receipt of bids, room 127. The Army contends that the protester's representation of the facts, that the bid opening official's office was the proper place for receipt of bids, led us to conclude that the room designated for receipt of bids was unattended before 3 p.m.

To obtain reversal or modification of a decision, the requesting party must convincingly show that our prior decision contains either errors of fact or of law or information not previously considered that warrant its reversal or modification. Interstate Diesel Services, Inc.--Reconsideration, B-230107.3, B-230107.4, Aug. 30, 1988, 88-2 CPD ¶ 190.

It is clear from the reconsideration request that Richards' employee did not first go to the office designated in the IFB for the receipt of bids, room 127, but he went to the bid opening official's office, accessed through either rooms 121 or 123. Since Richards' employee did not go to the correct room stated in the IFB for receipt of bids, the crucial fact for our sustaining Richards' protest, that Richards' employee was in the bid depository room at the appropriate time, was in fact not valid. Accordingly, we reverse our decision because of the error of fact, withdraw our recommendation that the Army make award to Richards and reverse our award of protest costs to Richards.


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